BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

ALICIA TRIMMELL	)	
Claimant	)	
VS.	)	
	)	Docket No. 250,993
BUCKLEY INDUSTRIES	)	
Respondent	)	
AND	)	
	)	
COMMERCIAL UNION INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent appeals from the preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes dated February 9, 2000, which granted claimant's request for medical treatment with George Lucas, M.D., payment of past medical expenses, and temporary total disability compensation if taken off work.

ISSUES

Two separate and distinct accidents are alleged in this single docketed claim. Both involve injuries to claimant's right knee. In the first, claimant alleges her knee popped and buckled while she was walking at work on July 21, 1999. The second injury occurred on December 3, 1999 as claimant was getting up from a foam block she had been sitting on while working at a table. Respondent argues personal risk. The issue, therefore, is whether claimant's injuries constitute accidents that arose out of the employment. K.S.A. 1999 Supp. 44-501(a).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On July 20, 1999, claimant was walking to work when she felt a pop in her right knee with marked pain. The next day claimant was walking at work when, as she turned a corner, her knee popped and buckled. She did not fall. Claimant has had previous problems with her right knee beginning in 1992 when she suffered a traumatic dislocation of the patella. After treatment, claimant was released without restrictions. Claimant alleges that except for the incident on July 20, 1999, she had not had any problems with her knee for quite some time before the July 21, 1999 accident at work. Respondent, on the other hand, argues claimant continued to experience problems with her right knee

before the July 21, 1999 injury and, therefore, that injury and the subsequent December 3, 1999 aggravation were the result of a personal risk.

Because these accidents occurred while claimant was at work, the accidents occurred in the course of claimant's employment. However, an accident must also arise out of the employment before it is compensable under the Kansas Workers Compensation Act. *See* Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973).

The phrase "out of" employment points to the cause or origin of the worker's accident and requires some causal connection between the accident and the employment. An accidental injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the resulting injury. An injury arises out of employment if it arises out of the nature, conditions, obligations, and incidents of the employment. Kindel v. Ferco Rental, Inc., 258 Kan. 272, 899 P.2d 1058 (1995).

In Hensley v. Carl Graham Glass, 226 Kan. 256, 597 P.2d 641 (1979), the Kansas Supreme Court adopted a risk analysis whereby it categorized risks into three categories: (1) those distinctly associated with the job; (2) risks that are personal to the workman; and (3) neutral risks which have no particular employment or personal character. "Personal risks do not arise out of and in the course of the employment and are not compensable." Martin v. U.S.D. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980).

The medical evidence shows the July 21, 1999 patella dislocation was not a new injury. But, even though claimant had a preexisting knee condition, there was no evidence that almost any everyday activity would aggravate it until July 20, 1999 when claimant was injured merely walking to work. Absent the July 20, 1999 incident, this case may have been distinguishable from Martin in that it was not clear that almost any everyday activity would have a tendency to aggravate claimant's preexisting knee condition. Claimant's knee had been doing well before July 20, 1999 but neither that accident nor the one at work the following day resulted from any particular trauma. The medical evidence, while equivocal on this point, suggests a direct causal relationship between the preexisting condition and the July 21, 1999 injury. Claimant has failed to prove that the July 21, 1999 injury was not directly due to the preexisting condition and thus a personal risk.

Claimant argues the December 3, 1999 accident is factually different from the July 21, 1999 accident because there were intervening or contributing causes from the work. The Board agrees. Claimant was essentially pain free when working within her restrictions before the December 3 accident. On that date she was sitting on a foam block that was awkward and unstable. Claimant testified that while sitting on this foam block she had to be careful not to lose her balance and fall backwards. Furthermore, when she sat on the foam block she settled into a position that was lower than the average seat. For these reasons it was more difficult for her to get up from the seated position on the foam block than it would be rising from a chair. Her knee injury occurred as she was attempting

to get up from the foam block. This was a work place hazard. Because the injury resulted from the concurrence of a preexisting condition and a hazard of employment, the injury arose out of the employment and is compensable. *See*, Bennett, supra; *see also* 1 Larson's Workers Compensation Law § 9.01 (1999).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated February 9, 2000, entered by Administrative Law Judge Nelsonna Potts Barnes, should be, and hereby is, reversed as to the July 21, 1999 accidental injury but affirmed as to the accident of December 3, 1999.

IT IS SO ORDERED.

Dated this ____ day of April 2000.

BOARD MEMBER

c: Kelly W. Johnston, Wichita, KS
Kendall R. Cunningham, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director